

REMARKS

Status of the claims

Claims 1, 3, 4, 7-9, 11-14, 16, 19-22, 25, and 26 are pending in this application, with claims 1, 14, 16, 19, 25, and 26 being in independent form. Claims 1, 9, 14, 16, 19, 20, 25, and 26 have been amended.

Statement of substance of interview

This Statement is being filed in response to the Examiner's request therefor in the Interview Summary mailed on November 3, 2009. The Examiner's Interview Summary follows the telephonic interview between the Examiner and Applicant's undersigned attorney on October 27, 2009.

The Examiner's comments set forth in the Interview Summary are hereby affirmed. During the interview, the Examiner confirmed that the shortened statutory period (SSP) for responding to the Office Action of July 9, 2009 is three months from that mailing date, extendible. (The undersigned attorney independently confirmed this on October 23, 2009 in a telephone conference with SPE Katherine Mitchell.)

The objection to the drawings

The drawings were objected to under 37 C.F.R. § 1.83(a) for not showing the features of claim 9. Claim 9 has been amended to overcome this rejection. As amended claim 9 recites attachment means including an applied adhesive or a double-sided adhesive tape (see two-sided self-adhesive strip 8 of Fig. 5) or mechanical means including screws (9) and rivets (10). Accordingly, withdrawal of the objection to the drawings is respectfully requested.

The rejections under 35 U.S.C. § 112, 1st and 2nd paragraphs

Claim 9 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner states that the claims call for attachment means including tape, magnetic, suction, and mechanical means including hinges, however, it cannot be determined from the specification and drawings how such is defined.

In an effort to advance prosecution the recitations of magnetic means, suction means, and hinges have been removed from claim 9. Applicant does not concede the propriety of the rejection. As for the recitation of tape, the Examiner is respectfully directed to the present specification at, e.g., page 6, line 22, to page 7, line 8 (two-sided self-adhesive strip 8 of Fig. 5).

Claims 1, 3, 4, 7-9, 11-13, 14, 16, 19-22, 25, and 26 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

In particular the Examiner states that:

Claim(s) 9 fail(s) to recite sufficient structural elements and interconnection of the elements to positively position and define how the attachment means includes tape, magnetic, suction and mechanical means including hinges so that an integral structure able to function as claimed is recited. It is unclear if applicant intended to claim a combination including a guard, horizontal surface, and child and adult since a guard is claimed with specific interconnection with a surface and child/adult such surface and child/adult not being positively claimed making the metes and bounds of the claims unclear and confusing to a potential infringer.

The claims have been carefully reviewed and amended as deemed necessary to ensure that they conform fully to the requirements of Section 112, second paragraph, with special attention to the points raised in paragraph of the Office Action. Recitations including “child” and “adult” have been removed from the claims. Specifically, for example in claim 1, the

recitation “to a child but not to an adult” has been changed to “when viewed from a height similar to or lower than the height of the horizontal surface.”

It is believed that the rejections under Section 112, first and second paragraphs, has been obviated, and their withdrawal is therefore respectfully requested.

The rejections under 35 U.S.C. § 102/103

Claims 1, 3, 4, 7, 8, 19, 20, and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 2,688,525 to Lindstrom. Claims 9, 11-14, 16, 21, and 22 were rejected under 35 U.S.C. § 103(a) as being obvious from Lindstrom; and claim 26, as being obvious from Lindstrom in view of U.S. Patent 3,034,153 to Sargent.

Applicant submits that independent claims 1, 14, 16, 19, 25, and 26, together with the claims dependent therefrom, are patentably distinct from the cited references for at least the following reasons.

Claim 1, for example, is directed to a safety guard adapted for prevention of accidental urged dislodgment of an article or liquid over an edge of a fixed horizontal surface, the fixed horizontal surface comprising a kitchen bench top or a cooktop. The height and material of the guard are such that when in use, the guard acts as a physical and visual barrier to objects on a far side of the guard when viewed from a height similar to or lower than the height of the horizontal surface. The material of the guard is opaque and the guard is demountable.

The general nature of Lindstrom has been discussed adequately in previous papers and it is not believed necessary to repeat that entire discussion.

In the previous response Applicant argued:

Turning to the present invention, the present invention provides a removable barrier arrangement having a location, height, and material that are selected so as to present a physical and/or visual barrier to children but not to adults, in respect of the accidental urged dislodgement of articles or liquids over the edge of a fixed horizontal surface such as a kitchen benchtop, a cooktop, or a table top.

...A notable function of the guard member is to provide a barrier to a child to objects on the far side of the guard member while not acting as a barrier to an adult. Applicant submits that there is no teaching in Lindstrom of a guard member for the prevention of dislodgement of an article or liquid, nor of a guard member acting as a barrier to a child to objects on the far side of that guard member, as now recited in claims 1, 14, 16, 19, 25, and 26.

In reply the Examiner states, *inter alia*:

Lindstrom teaches structure as claimed able to function as claimed. It is unclear how the structures of Lindstrom do not function as claimed.

Claim 1 as amended recites a number of clear patentable distinctions over Lindstrom.

First, as noted above, claim 1 requires that the height and material of the guard are such that when in use, the guard acts as a physical and visual barrier to objects on a far side of the guard when viewed from a height similar to or lower than the height of the horizontal surface. Claim 1 also requires the material of the guard to be opaque.

However, the screens 46 of Lindstrom are glass. The Examiner is directed, for example, to column 1, lines 22-23 of that patent, which state that the utility counter-desk has “novel translucent screen construction and manner of attachment” (emphasis added). The Examiner is also directed to column 4, lines 27-29, which states: “These screens [46] are preferably made from plexiglass, but if desired they may be made from plate glass or other suitable material” (emphasis added).

Accordingly, the screens 46 of Lindstrom are see-through. The safety guard of claim 1, in stark contrast, is of an opaque material. This is plainly a structural difference from the utility counter-desk of Lindstrom. Furthermore, since the screens 46 of Lindstrom are translucent they cannot act as a visual barrier as required in amended claim 1.

Second, amended claim 1 recites that the guard is demountable. However, the screens 46 of Lindstrom are mounted and sealed with rubber 48. See column 4, lines 33-36 of that patent, which states: "A rubber sealing strip 48 is fitted between each screen 46 and its associated channel 47 in the manner clearly illustrated in Fig. 10".

Accordingly, the screens 46 of Lindstrom are mounted and sealed with rubber to its associated channel. The safety guard of claim 1, in stark contrast, is demountable. This is plainly a structural difference from the utility counter-desk of Lindstrom. By virtue of the features of claim 1, the safety guard can be demounted from the channel, which, among other things, can enable easy cleaning of any liquid that has been spilled and has thereby seeped into the channel.

For at least the foregoing reasons, claim 1 is seen to be clearly allowable over Lindstrom. Independent claim 25 recites features which are similar in many relevant respects to those discussed above in connection with claim 1. Accordingly, claim 25 is believed to be patentable for at least the same reasons as discussed above in connection with claim 1.

Independent claim 14 as amended recites that the guard is made of an opaque material and that the guard defines a physical and visual barrier, and therefore claim 14 is seen to be patentable over Lindstrom for at least those same reasons discussed above as well. Independent claim 16 as amended recites that the guard acts as a physical and visual barrier and that it is demountably retained in a fixed channel, and therefore claim 16 is seen to be patentable over Lindstrom for at least those same reasons discussed above as well.

With respect to obviousness Applicant notes that there is no reason why Lindstrom, which teaches a translucent material for its screens 46 (specifically glass) would use an opaque material instead. Applicant submits that the purpose of the screens 46 is to provide some notional separation between a sitting clerk and a person at the other side of the utility counter-desk, and the screens of Lindstrom are not safety guards or intended as visual barriers as in the claimed invention. Accordingly, there is no reason why a person having ordinary skill in the art would, without the benefit of hindsight after a reading of Applicant's invention, have had any reason to use an opaque material for the screens 46 when Lindstrom teaches a translucent material (MPEP 2142: "...impermissible hindsight must be avoided...").

Furthermore, claim 14 as amended also recites "providing a guard member disposed along at least a portion of said edge of said surface, said edge being a leading edge." However, the screens 46 of Lindstrom are not disposed on a leading edge at all; as shown in Figs. 2, 3, and 11 they are set in from the edge. This is plainly a structural difference from the utility counter-desk of Lindstrom.

Nor would a person having ordinary skill in the art have found it obvious to place the screens 46 of Lindstrom at a leading edge of the utility counter-desk (either at a leading edge of deal shelf D or of surface S); it would not be rational to modify Lindstrom in this fashion because at a leading edge the screens 46 would not serve their purpose, which Applicant submits is to provide some notional separation between a sitting clerk and a person at the other side of the utility counter-desk. Even more than that it would not be rational to make such a modification because then the screens 46 would be impeding the use of the utility counter-desk, which would frustrate the purpose of Lindstrom.

... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. MPEP 2141.III, quoting *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007).

Applicant also notes MPEP 2142, which provides, with respect to establishing a prima facie case of obviousness:

The key to supporting any rejection under rejection under 35 U.S.C. 103 is the clear articulation of the reason why the claimed invention would have been obvious.
(Emphasis added.)

For at least the foregoing reasons, claims 14 and 16 are seen to be clearly allowable over Lindstrom.

Independent claim 19 recites features which are similar in many relevant respects to those discussed above in connection with claim 14, e.g., with respect to a “leading edge.” Accordingly, claim 19 is believed to be patentable for at least the same reasons as discussed above in connection with claim 14.

Claim 26 recites a plurality of guard members, each having a different height, and each being selectable for engagement with the slot based on the height and material of the guard member. The screens 46 of Lindstrom, in stark contrast, are of just one height and are not selectable based on height and material such that when engaged in the slot, the selected guard member acts as a physical and visual barrier to objects on a far side of the guard member when viewed from a height similar to or lower than the height of the horizontal surface. As noted above with respect to claim 1, the screens 46 of Lindstrom are translucent or glass, and therefore would not act as a visual barrier.

Claim 26 also recites that the rail is aligned at a front edge of the fixed horizontal surface (e.g., a cook top). The screens 46 of Lindstrom are not aligned at the front edge, as explained above in connection with claim 14.

As to claim 26 requiring a plurality of guard members each having a different height, the Examiner concedes at page 6 of the Office Action that Lindstrom doesn't teach that the height of each guard may be different. However, the Examiner proceeds to apply Sargent to the rejection, stating at page 6 that:

[T]he patent to Sargent teaches the use of providing different height of guard members to be old. It would have been obvious and well within the level of ordinary skill in the art at the time the invention was made to modify the structure of Lindstrom to include guard members of different heights, as taught by Sargent since such structures are used in the same intended purpose and would have been a predictable result thereby providing structure as claimed.

Applicant respectfully submits that the reasoning offered by the Examiner for combining Lindstrom and Sargent is simply inadequate. As should be readily apparent from reading the above statement of the Examiner, the Examiner's reasoning is entirely conclusory. The Examiner states vaguely that "such structures are used in the same intended purpose," but does not explain what that "same intended purpose" is. The Examiner speaks vaguely of a "predictable result" but does not explain what that "predictable result" is. As noted above, KSR provides that "rejections on obviousness cannot be sustained by mere conclusory statements" and "instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." As also explained above MPEP 2142 provides that a rejection under 35 U.S.C. 103 must be supported by "the clear articulation of the reason why the claimed invention would have been obvious" (emphasis added). It is submitted that the Examiner has not met that burden for supporting the legal conclusion of obviousness.

Sargent relates to an infant changing table having guard means surrounding the table

top to prevent the infant from rolling off. At least one of the sides is adapted to be raised or lowered to permit the attendant to attend to the infant without being subjected to the inconvenience of having to reach over an interfering rail or side portion and which permits the side to be raised into the guarding, confining, or retaining position if necessity requires the infant to be momentarily left unattended. (See column 1, lines 13-22.)

Once again it is noted that the Examiner does not set out any specific reasoning for combining Lindstrom and Sargent. These two patents are directed to different problems. Lindstrom's screens are apparently to provide a notional separation between a sitting clerk and a person at the other side of the utility counter-desk; the utility counter-desk of Lindstrom does not at all contemplate holding an infant. Sargent's objective is to hold an infant and permit the attendant to more easily access the infant without being inconvenienced by the rails. There is therefore no rational basis for applying the teaching of Sargent to Lindstrom since the problems that Sargent seeks to cure simply do not exist in Lindstrom's apparatus.

For at least the foregoing reasons, claim 26 is seen to be clearly allowable over Lindstrom and Sargent for at least these reasons as well.

The dependent claims

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

The other art of record

A review of the other art of record, including Stangert, Chen, Schottland, Wylie, Yatsko, Steinhilber, Whetstone, Alberts, Merit, Cyrluk, Hardy, Merit et al., and Armstrong, has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record. Nevertheless, Applicant has the following specific remarks regarding those citations.

US 2,942,924 (by Stangert)

The arrangement is for a partitions system incorporated in office furniture, specifically office desks for the purpose of providing "semi-private compartments". There is no teaching in Stangert that the panels (27) which are affixed at the sides of a desk are for the purpose of prevention of dislodgment of articles or liquids, nor to act as a physical and/or visual barrier to small children.

US 3,433,364 (by Chen)

The device of this patent is, Applicant submits, not a demountable safety guard for the prevention of accidental dislodgement of articles or liquids nor to act as a physical and/or visual barrier to small children. It is a book display stand with "leaf or brace members" which are fixed (and not demountable) to a rotating platform by hinges.

US 3,504,956 (by Schottland)

This citation does not, Applicant submits, disclose a demountable safety guard for prevention of dislodgement of articles or liquid over the edges of a fixed horizontal surface nor to act as a physical and/or visual barrier to small children. The "tray dividers" of this citation only act as dividers within a fixed well forming the top of a display cabinet.

US 4,044,694 (by Wylie)

It is submitted that the arrangement disclosed by Wylie is not for a demountable barrier at the edge of a bench top nor to act as a physical and/or visual barrier to small children. The vertical partition at the edge of the writing desk does not in fact extend down to the desk surface and is clearly not intended to prevent articles or liquid from dislodgement from the surface.

US 4,775,058 (by Yatsko)

The device of this citation is for the dividing of a surface of a display shelf. There is no disclosure nor teaching in Yatsko of a selection of any of the dividing elements being a safety guard or a physical and/or visual barrier to children.

US 4,986,193 (by Steinhilber)

Again, Applicant submits, this is not a disclosure of a safety barrier, the height and material of which is selected so as to present a physical and/or visual barrier to children.

US 5733022 (by Whetstone)

The device of US 5733022 is a "backsplash"; that is, it is a vertical panel permanently attached at a rear edge of a countertop, as indicated at column 1 lines 33 to 38. It clearly cannot function as a safety barrier for accidental dislodgement over an edge nor to act as a physical and/or visual barrier to small children and not adults.

US 5,890,782 (by Alberts)

Again, we submit, this is not a safety barrier nor a physical and/or visual barrier to prevent access to objects by children on a bench top.

US 6,006,678 (by Merit)

The disclosure of this citation is for a system of dividers for a shelf. There is no teaching that the arrangement acts as a safety barrier or a physical and/or visual barrier to children from objects on the shelf.

US 6,571498 (by Cyrluk)

This patent does not refer to benches at all. It appears to be directed to display shelving - a completely different area of technology to that of the present application. The various configurations of the device of Cyrluk are for a shelf front "holder member" and "retaining wall" attachment to the holder member. Although the retaining wall is clearly intended to retain articles on the shelf to which the holder member is applied, there is clearly no disclosure or teaching towards the retaining wall acting as a kitchen bench top or cook top or as a physical/visual barrier to visualization by small children.

US 6,964,235 (by Hardy)

This patent does not refer to benches at all. It appears to be directed to display shelving - a completely different area of technology to that of the present application. This arrangement is another merchandising shelf divider system. There is no disclosure or teaching of a barrier which acts as a physical and/or visual barrier to visualization by small children from objects on the shelf.

US 7,395,938 (by Merit et al)

This patent does not refer to benches at all. It appears to be directed to display shelving - a completely different area of technology to that of the present application. This also is a shelf divider arrangement for display of merchandise, and Merit also does not disclose or teach a guard which acts as a physical and/or visual barrier to visualization by small children.

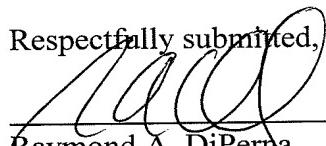
US 3,512,652 (by Armstrong)

This patent does not refer to benches at all. It appears to be directed to display shelving - a completely different area of technology to that of the present application. Although the deletion of claims 23 and 24 removes the objection raised on the basis of this citation, it is noted that Armstrong discloses a system for partitioning a shelf or display counter. Again there is no disclosure or teaching towards physical and/or visual safety barriers to children to objects beyond the partitions.

Conclusion

This Amendment After Final Rejection is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under 37 C.F.R. § 1.116. Accordingly, entry of this Amendment After Final Rejection, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, he is respectfully requested to contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Respectfully submitted,

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